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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/773,551	02/05/2004	George Bayer	2350.421	6796
23405	7590	11/28/2005		
HESLIN ROTHENBERG FARLEY & MESITI PC 5 COLUMBIA CIRCLE ALBANY, NY 12203			EXAMINER BAXTER, GWENDOLYN WRENN	
			ART UNIT 3632	PAPER NUMBER
DATE MAILED: 11/28/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/773,551	<b>Applicant(s)</b> BAYER ET AL.	
	<b>Examiner</b> Gwendolyn Baxter	<b>Art Unit</b> 3632	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16, 18 and 19 is/are rejected.
- 7) ☒ Claim(s) 17 and 20 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>2/5/04; 4/1/04; and 6/27/03</u> | 6) <input type="checkbox"/> Other: ____  |

This is the first office action for application serial number 10/773,551, Arrangements braces and methods for supporting an arm of an ornamental fixture, filed October 5, 2004.

***Information Disclosure Statement***

The information disclosure statements filed February 5, 2004, April 1, 2004 and June 27, 2005, respectively, have been placed in the application file, and the information referred to therein has been considered.

***Specification***

The disclosure is objected to because of the following informalities: paragraph 0026, line 11, "crystal arraignments" should read –crystal arrangement- and line 12, "bobeche 24" should read –bobeche 20-.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2, 5, 6, 10, 13, and 16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 2, 5, 6, and 10, the preamble of independent claim 1, recites an intended use “for supporting an arm of an ornamental fixture”, however, claim 2 recites, “the arm of the ornamental fixture comprises a glass arm.” Consequently, it is not clear whether applicant intends to claim the combination of the brace with the ornamental fixture. If the combination is to be claimed, then delete “for” in the preamble of claim 1. Please clarify.

Regarding claim 13, this claim is set forth to depend upon itself, which is improper claim numbering. Correction is required. For the purpose of this Office action claim 13 is said to depend upon claim 12.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 5-7, 9-11, 18 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,354,305 to Spicer et al. The present invention reads on Spicer as follows: Spicer teaches a brace (100) comprising an elongated element (102) and at least one platform (108). The elongated element has a first end (screws similar to 26) adapted to mount to a support (24) and a free second end (near 110). The platform is located between the first end and the second end. The platform is adapted to support the arm (106) of the fixture. The platform comprises a plate (108)

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mounted to the brace. The arm of the ornamental fixture comprises a lower surface and the brace comprises an upper surface (both near 112) that substantially conforms to the lower surface of the arm. The elongated element comprises at least one perforation (112). See figure 5.

Regarding claim 9, Spicer teaches a brace comprising an elongated element (12) and at least one platform (36). The elongated element has a first end adapted to mount to a support (24) and a free second end (near 40). The platform is located between the first end and the second end. The platform is adapted to support the arm of the fixture. The elongated element further comprises at least one ornament mounting hook arrangement (the hook portion below the second screw 26). See figure 1.

Regarding claims 10 and 11, Spicer teaches a brace comprising an elongated element (220) and at least one platform (the top surface of 220). The elongated element has a first end adapted to mount to a support and a free second end. The platform is located between the first end and the second end. The platform is adapted to support the arm (218) of the fixture. The ornamental fixture comprises a chandelier. The platform comprises a surface on the elongated element. See figure 6.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 8, and 12-16 rejected under 35 U.S.C. 103(a) as being unpatentable over Spicer. Spicer teaches an arm 106 having a first end adapted to mount to a support and a second free end adapted for mounting the decorative fixture 34. A brace 100 is for supporting the arm 106. The brace comprises an elongated element (102) having a first end adapted to mount to the support and a free second end. At least one platform 108 located between the first end and the second end of the elongated element. The platform is adapted to support the arm (106). The arm comprises a lower surface and the elongated member comprises an upper surface shaped to substantially conform to the lower surface of the arm, wherein the arm comprises a lower surface and the elongated member comprises an upper surface shaped to substantially conform to the lower surface of the arm. At least one means for mounting an ornament to the brace comprises a u-shaped channel (110) in the elongated element. However, Spicer fails to teach the arm being made from glass and the elongated element comprises a thickness between about 0.10 and about 3.0 inches. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have made the arm glass, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. Additionally, it would have been an obvious matter of design choice to have made the thickness of the elongated element between about 0.10 inches and about 3.0 inches, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art.

***Allowable Subject Matter***

Claims 17 and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: the prior art of record fails to teach a cushioning material located on the platform.

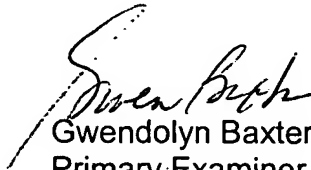
***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gwendolyn Baxter whose telephone number is 571-272-6814. The examiner can normally be reached on Monday-Wednesday, 8:30am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski can be reached on 571-272-6788. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Gwendolyn Baxter  
Primary Examiner  
Art Unit 3632

November 14, 2005